No. 97-1945

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In The

Supreme Court of the United States

October Term, 1997

SANDRA L. BENEDICT,

Petitioner,

v.

EAU CLAIRE PUBLIC SCHOOLS, WISCONSIN EDUCATION ASSOCIATION COUNCIL, THOMAS BLOUNT, MICHAEL BURKE,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit Court

BRIEF OF RESPONDENT EAU CLAIRE PUBLIC SCHOOLS IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW BY RESPONDENT EAU CLAIRE PUBLIC SCHOOLS

Respondent Eau Claire Public Schools objects to the "Questions Presented for Review" contained in the Petition for Writ of Certiorari, and believes the proper inquiry should be as follows:

> Whether Sandra Lea Benedict's petition for Writ of Certiorari presents any compelling reason for review of the Seventh Circuit's affirmance of a summary judgment dismissal of petitioner's claims under the Age Discrimination in Employment Act (ADEA) or under the Americans with Disabilities Act (ADA). *See*, Rule 10, Rules of the Supreme Court.

LIST OF PARTIES

Petitioner, Sandra Lea Benedict, sued the Eau Claire Public Schools (ECPS) for alleged violations of the ADEA and the ADA in the United States District Court for the Western District of Wisconsin. Petitioner also sued the Wisconsin Education Association Council (WEAC), a public teacher labor organization, Thomas Blount, a representative of petitioner's collective bargaining unit, and Michael Burke, a representative of Northwest United Educators (NUE) which is an affiliated collective bargaining agency of WEAC.

On appeal to the Seventh Circuit, the only proper parties to the case are the petitioner and ECPS. WEAC was never served with a Summons and Complaint by Ms. Benedict. Blount and Burke were dismissed from the litigation at the district court level by a written stipulation executed by petitioner.

I. OPINIONS BELOW

The Seventh Circuit's unpublished decision and order for this case is reproduced in the appendix of the Petition for Writ of Certiorari at pp. A2-A21. The relevant memoranda and orders of the United States District Court for the Western District of Wisconsin relative to summary judgment for ECPS are reproduced in the petitioner's appendix at A31-A45.

II. JURISDICTION

On February 10, 1998, the Seventh Circuit issued its decision and order in this case. On or about February 17, 1998, petitioner filed motions for rehearing to the court of appeals. Rehearing was denied by the Seventh Circuit on March 5, 1998. *See*, Petitioners's appendix at A22. The Petition for Writ of Certiorari was timely filed with the Supreme Court on or about May 28, 1998. As to ECPS only, jurisdiction of the Supreme Court is proper under 28 U.S.C. § 1254(1).

III. STATUTES INVOLVED

Petitioner's claims arise under the ADEA, *see* 29 U.S.C. § 621, *et seq.*, and the ADA, *see* 42 U.S.C. § 12101, *et seq.*

IV. STATEMENT OF THE CASE

The decision of the Seventh Circuit expressly ruled upon the petitioner's claims under the ADEA and the ADA against ECPS. There are no other parties nor are there any claims beyond those ruled upon by the court of

appeals. Accordingly, petitioner's reference to amended pleadings under Rule 15(a), F.R.C.P., equitable tolling and borrowed statute of limitations under 42 U.S.C. § 1983, removal of state administrative proceedings to Federal Court by 28 U.S.C. §§ 1441-1450, the Fair Labor Standards Act, the EPA, or the Rehabilitation Act, are neither materially germane nor otherwise relevant to the Supreme Court's review of the petition filed by Ms. Benedict. If the Supreme Court were to review the Seventh Circuit's decision in this matter, its analysis would most appropriately be focused upon petitioner's claims under the ADEA, the ADA and for alleged retaliation against petitioner because she filed claims with the Equal Employment Opportunity Commission. These are the issues which the Seventh Circuit believed were properly before it on appeal.

The District Court had subject matter jurisdiction pursuant to 28 U.S.C. § 1331. The Court of Appeals had jurisdiction pursuant to 28 U.S.C. § 1291.

V. REASONS FOR DENYING WRIT

In all of the petition, there is no clear expression by Ms. Benedict that points with specificity to any error on the part of the Seventh Circuit in rendering its decision. Indeed, the petition raises a number of new legal issues that were never considered by the court of appeals or the district court (i.e., potential Sec. 1983 claims). It is well established that the Supreme Court rarely considers issues raised in such a fashion. *See, DeShaney v. Winnebago County Dept. of Social Services,* 48 U.S. 189, 195 n. 2 (1989).

To justify the granting of a Writ of Certiorari by the Supreme Court, the petitioner needs to show more than that she simply disagrees with the lower courts' rulings. Rule 10 of the Supreme Court Rules requires a compelling reason before review would normally be considered.

Ms. Benedict identifies no error on the part of the Seventh Circuit for the Supreme Court to correct. Nor does Ms. Benedict identify any important precedential issue (i.e., a case of first impression) which the Supreme Court needs to address. Nor does Ms. Benedict present any important issues of statutory interpretation which would require the Supreme Court's attention. No compelling reason of any kind is provided by Ms. Benedict for the Supreme Court to devote its limited resources to a review of her petition. In other words, neither the Supreme Court nor ECPS have been made aware of any compelling purpose that might be served if Ms. Benedict's petition were to be granted.

VI. CONCLUSION

Therefore, the ECPS respectfully requests that Ms. Benedict's Petition for Writ of Certiorari be denied.

Respectfully submitted,

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